

# HOUSE . . . . . No. 1416

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Danielle W. Gregoire**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the authority of the Disabled Persons Protection Commission to seek restraining orders.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Danielle W. Gregoire	4th Middlesex
James B. Eldridge	
Martin J. Walsh	13th Suffolk
Christopher G. Fallon	33rd Middlesex
Frank I. Smizik	15th Norfolk
Bruce J. Ayers	1st Norfolk
Anne M. Gobi	5th Worcester
John P. Fresolo	16th Worcester
Bradley H. Jones, Jr.	20th Middlesex
John W. Scibak	2nd Hampshire
Richard R. Tisei	Middlesex and Essex
Denise Provost	27th Middlesex
Barbara A. L'Italien	18th Essex
Robert F. Fennell	10th Essex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO THE AUTHORITY OF THE DISABLED PERSONS PROTECTION COMMISSION TO SEEK RESTRAINING ORDERS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. SECTION 7 OF CHAPTER 19C OF THE GENERAL LAWS, AS APPEARING IN THE 2004 OFFICIAL EDITION, IS HEREBY AMENDED AS FOLLOWS: BY ADDING AFTER (D) THE FOLLOWING LANGUAGE:

(e) No person shall interfere with the provision of protective services or protective placement provided to a person with a disability who requests, consents or assents to receiving those services or placement. In the event that such interference occurs, the Commission, the Department of Mental Health, the Department of Mental Retardation or the Massachusetts Rehabilitation Commission may petition the court for a temporary restraining order to enjoin such interference.

(f) When a court order exists authorizing protective services for a person with a disability who lacks capacity to consent and any person interferes with the provision of such court-ordered protective services, the appropriate law enforcement agency shall enforce the order of the court, including but not limited to, taking the person with a disability into protective custody and transporting said person with a disability to an appropriate medical or protective services facility in order to provide the protective services as ordered by the court. In addition, said law enforcement agency, the Commission, the Department of Mental Health, the Department of Mental Retardation or the Massachusetts Rehabilitation Commission may petition the court for a temporary restraining order to enjoin such interference.

(g) Notwithstanding any provision contained herein to the contrary, if during an investigation conducted pursuant to Section 5 the alleged abuser seeks continued contact with the alleged victim of abuse, the Commission, the Department of Mental Health, the Department of Mental Retardation or the Massachusetts Rehabilitation Commission may petition the court for a temporary restraining order to enjoin such contact during the pendency of said investigation.

(h) The action may be brought either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which the defendant resides or has his principal place of business. Said court may issue a temporary restraining order or make such other orders or judgments as it may deem appropriate. The court issuing said order against the defendant shall retain jurisdiction of the matter. Any person who is restrained as a result of an action brought pursuant to this section may petition the court for a modification or termination of the order upon ten days written notice to the petitioning agency and the to the attorney general.

(i) In an action brought pursuant to this section, whenever the court issues a temporary restraining order ordering a defendant to refrain from certain conduct or activities, the order issued shall contain the following statement:

“The clerk shall transmit two certified copies of each such order issued under this section to each appropriate law enforcement agency having jurisdiction over locations where such defendant is alleged to have committed the act giving rise to the action, and such law enforcement agency shall serve one copy of the order upon the defendant. Unless otherwise ordered by the court, service shall be by delivering a copy in hand to the defendant.”

Law enforcement agencies shall establish procedures adequate to ensure that all officers responsible for the enforcement of the order are informed of the existence and terms of such order. Whenever any law enforcement officer has probable cause to believe that such defendant has violated the provisions of this section, such officer shall have the authority to arrest said defendant.

Whenever the court vacates a temporary restraining order issued under this section, the clerk shall promptly notify in writing each appropriate law enforcement agency which has been notified of the issuance of the order and shall direct each such agency to destroy all record of such vacated order, and such agency shall comply with such directive.

(j) Any district attorney, law enforcement office or state agency receiving notice of any alleged violation of this section or violation of an order issued in an action brought under this section shall immediately forward written notice of the same together with all relevant information that it may have to the office of the attorney general. Whenever the attorney general has probable cause to believe that said order has been violated, the attorney general may bring an action to enforce said order and to seek punishment for violation of said order.

(k) After any such order has been served upon the defendant, any violation of such order shall be punishable by a fine of not more than ten thousand dollars or by imprisonment for not more than one year in a house of correction, or both such fine and imprisonment.

Nothing contained herein shall prohibit the attorney general in his discretion from beginning an action for civil contempt rather than seeking criminal charges for an alleged violation of an order issued under this section. A court making a finding that the defendant is in civil contempt by reason of an alleged violation of an order entered under this section shall assess a civil penalty of not more than five thousand dollars for each such violation found.